

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 615-921-9470

2 VICTORY AVENUE SOUTH, SUITE 500
NASHVILLE, TN 37213

Facsimile 615-921-8011

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VIA FOIAonline (foiaonline.regulations.gov) and U.S. Mail

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

**Re: Freedom of Information Act Request and Fee Waiver Request re: EPA's
Review and Comment on Environmental Impacts Pursuant to Section
102(2)(C) of the National Environmental Policy Act and Section 309 of the
Clean Air Act**

Dear Sir or Madam:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC"), a 501(c)(3) non-profit organization, requests the following information:

1. All documents created, edited, or received by Region 4 of the Environmental Protection Agency since November 8, 2016 relating to the interpretation and implementation of EPA's obligation to review and comment on environmental impacts pursuant to Section 102(2)(C) of the National Environmental Policy Act and Section 309 of the Clean Air Act; and
2. All comment letters created, edited, or issued by Region 4 of the Environmental Protection Agency pursuant to its authority under Section 102(2)(C) of the National Environmental Policy Act and Section 309 of the Clean Air Act since January 20, 2017, including all drafts.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, emails, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Environmental Protection Agency.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(a)(8)(A). Should our requests be denied, we request that you inform us of the

grounds for denial and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D.Colo.1994); *Etlinger v. FBI*, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers....” *Pederson*, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 30 years of experience disseminating public information regarding EPA regulatory and operations issues. *See* 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. Lawyers at SELC are interviewed by the media to explain their work and its significance. SELC’s website contains documents generated by SELC for the specific purpose of educating the public on particular issues. SELC also speaks at conferences on particular topics. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

The particular topic of this FOIA request concerns EPA’s obligation to review and comment on the environmental impacts of major federal actions under the National Environmental Policy Act. For many years, SELC has participated in NEPA processes related to the environmental impacts of major federal actions throughout the Southeast region and has disseminated information about these processes to the public. For example, in 2016, SELC, together with several environmental organizations, submitted three sets of comments on a programmatic environmental impact statement developed by the Tennessee Valley Authority regarding closure of its coal ash ponds. We provided information about TVA’s environmental impact statement to the public and the press¹ and were interviewed for radio and newspaper articles about TVA’s preference for capping leaking, unlined coal ash pits in place.² Some of our comments in the administrative record and in the press directly addressed the role of EPA in reviewing and commenting on TVA’s environmental impact statement.³

¹ <https://www.southernenvironment.org/news-and-press/press-releases/concerns-raised-about-tvas-coal-ash-cover-up-plan>; <https://www.southernenvironment.org/news-and-press/news-feed/tva-doubles-down-on-coal-ash-cover-up-plan-despite-growing-public-concern>; <https://www.southernenvironment.org/news-and-press/press-releases/groups-oppose-tvas-coal-ash-cover-up-plan-as-public-comment-period-ends/>.

² <http://www.timesfreepress.com/news/business/aroundregion/story/2016/jun/16/utilities-move-cap-remove-coal-ashtvplblasted/371287/>;

http://www.al.com/news/huntsville/index.ssf/2016/07/tva_coal_ash_plan_draws_ire_fr.html;

<http://nashvillepublicradio.org/post/tva-says-it-won-t-haul-away-ash-piles-closed-coal-plants#stream/0>.

³ <http://archive.knoxnews.com/opinion/columnists/tva-is-ignoring-concerns-about-capping-coal-ash-3a4771aeb7a1-1649-e053-0100007f4b33-390745451.html>.

EPA is a government actor, and the information requested by SELC is not already available in the public domain to our knowledge.

A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government. SELC further certifies that disclosure of the information sought is not in our commercial interest.

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to contact me at 615-921-9470 or agarcia@selctn.org. I appreciate your prompt attention to this matter and look forward to receiving the public records requested.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Amanda Garcia', followed by a long horizontal line extending to the right.

Amanda Garcia
Staff Attorney